UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

RYAN L. FISEL,	)	
	)	
Plaintiff,	)	
	)	CAUSE NO. 3:07-CV-560 PS
vs.	)	
	)	
MARK OLIVERO, and JEFFREY RAFF,	)	
	)	
Defendants.	)	

OPINION AND ORDER

Ryan L. Fisel, a *pro se* prisoner, submitted a complaint under 42 U.S.C. § 1983 [DE1]. Pursuant to 28 U.S.C. § 1915A, the Court must review the merits of a prisoner complaint and dismiss it if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. FED. R. CIV. P. 12(b)(6) provides for the dismissal of a complaint, or any portion of a complaint, for failure to state a claim upon which relief can be granted. Courts apply the same standard under § 1915A as when addressing a motion under RULE 12(b)(6). *Lagerstrom v. Kingston*, 463 F.3d 621, 624 (7th Cir. 2006).

The pleading standards were recently retooled by the Supreme Court. In the context of a motion to dismiss for failure to state a claim, the Court stated that the "plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic v. Twombley*, 127 S. Ct. 1955, 1964-65 (2007) (quotation marks and alterations omitted). Instead the Court held that the factual allegations in the complaint "must be enough to raise a right to relief above the speculative level." *Id*. at 1965. Two weeks later the Supreme Court decided *Erickson v.*

Pardus, 127 S. Ct. 2197 (2007). In *Erickson* the Court also took up the issue of pleading standards, but this time in the context of *pro se* litigation. In *Erickson*, the Court stated that "[s]pecific facts are not necessary" to meet the requirements of Rule 8(a). *Id*. at 2200. The Court further noted that a "document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Id*. (quotation marks and citations omitted). In an effort to reconcile *Twombley* and *Erickson* the Seventh Circuit has read those cases together to mean that "at some point the factual detail in a complaint may be so sketchy that the complaint does not provide the type of notice of the claim to which the defendant is entitled under Rule 8." *Airborne Beepers & Video, Inc. v. AT&T Mobility*, 499 F.3d 663, 667 (7th Cir. 2007).

In order to state a cause of action under 42 U.S.C. § 1983 the plaintiff must allege that some person has deprived him of a federal right and that the person who has deprived him of the right acted under color of state law. *Alvarado v. Litscher*, 267 F.3d 648, 651 (7th Cir. 2001). Fisel alleges that his public defenders refused to provide him with copies of discovery from his state criminal case. (*See* Compl. [DE1].) A defense attorney, even an appointed public defender, does not act under color of state law. *Polk County v. Dodson*, 102 S. Ct. 445, 453 (1981). Because the Defendants are not state actors and did not act under color of state law, they cannot be sued under § 1983.

For the foregoing reasons, this case is **DISMISSED** pursuant to 28 U.S.C. 1915A.

SO ORDERED.
ENTERED: November 26, 2007

s/ Philip P. Simon
PHILIP P. SIMON, JUDGE
UNITED STATES DISTRICT COURT